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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

GEORGE P. ALEXANDER,

Plaintiff and Appellant,

v.

BIOLA UNIVERSITY,

Defendant and Respondent.

B219432

(Super. Ct. No. BC 384540)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Luis A. Lavin, Judge. Affirmed.

Law Offices of Michael F. Baltaxe, Michael F. Baltaxe; Lascher & Lascher,
Wendy Lascher and Eric R. Reed for Plaintiff and Appellant.

Ogletree, Deakins, Nash, Smoak & Stewart, Stuart D. Tochner and Dennis
DePalma for Defendant and Respondent.

George P. Alexander was a tenured associate professor at Biola University. When Alexander applied for promotion to full professor, Biola discovered that he had committed extensive acts of plagiarism in his published work, and Biola fired him. Alexander, who is an ethnic Indian born in Sri Lanka, filed suit against Biola, alleging that he was fired because of his race, ethnicity, or national origin. He also alleged that he was fired in retaliation for complaining about what he perceived to be discriminatory treatment of an Indian graduate student. The trial court granted summary judgment in favor of Biola, and we affirm.

BACKGROUND

In 1978, Alexander came to the United States to study, earning a master's degree in 1982, a second master's degree in 1985, and a Ph.D. in 1990. He began teaching as a part-time adjunct professor at Biola in or around 1990. In 1994, Biola promoted him to the full-time position of "Assistant Professor II," skipping the level of "Assistant Professor I" on the basis of his prior work for the university. In 1996, Alexander received a second Ph.D. In or around 1996 or 1997, Biola promoted Alexander to the position of "Associate Professor I." In or around 1998, Biola promoted Alexander to the position of "Associate Professor II." In or around 2001, Biola promoted Alexander to the position of "Associate Professor III" and granted Alexander's application for tenure. Dean F. Douglas Pennoyer approved Alexander's applications for tenure and promotion to "Associate Professor III," as did Dr. Doug Hayward, the chair of Alexander's department.

In early 2006, Alexander became aware of what he believed to be discriminatory treatment of an Indian graduate student. The student had been required to retake his comprehensive exams even though, according to Alexander, the student had received a passing grade from at least one grader, which, as a general rule, was sufficient to avoid retaking the exams. In March 2006, Alexander complained about this to Pennoyer, but Pennoyer did not respond.

In September 2006, Alexander applied for promotion to full professor. In support of his application, he submitted samples of his published academic work. Biola personnel involved in reviewing the application discovered that some of his publications contained passages that were identical, verbatim, to passages in prior works by other authors, but the passages were not enclosed in quotation marks or accompanied by any other indication (such as a footnote or other citation) that they were lifted from those authors' works.

In November 2006, Biola denied Alexander's application for promotion and terminated his employment. Biola told Alexander he was being terminated for committing plagiarism.

Alexander filed suit against Biola in January 2008, alleging claims for employment discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), Government Code section 12940 et seq. The complaint alleged that Biola "had a policy of discriminating against minority faculty, including faculty of the Indian race, ethnicity, or national origin . . . in the form of a 'glass ceiling' and that [Alexander] was discriminated against and fired as a result of this policy." The complaint also alleged that he was terminated "in retaliation for protesting [Biola's] discrimination against minority students," including the graduate student who was allegedly subjected to discriminatory treatment concerning his comprehensive exams.

Biola moved for summary judgment or alternatively summary adjudication, arguing that the undisputed facts showed that Alexander committed plagiarism in violation of Biola's academic honesty policy. On that ground, Biola argued both that Alexander could not show a *prima facie* case of discrimination (because he was not performing competently in his position) and that the school had a legitimate nondiscriminatory reason for firing him. In opposition, Alexander argued that he was performing competently and that the plagiarism allegations were merely a pretext for discrimination and retaliation. Biola's reply papers in support of the motion included 182 objections to the evidence Alexander had submitted in opposition.

The trial court granted the motion for summary judgment. The court also sustained 74 of Biola's objections and overruled the remainder. The court concluded that the admitted evidence was insufficient to raise a triable issue of fact as to pretext, which was fatal to the discrimination and retaliation claims. The court expressly declined to rule on Biola's argument that Alexander could not show a prima facie case of discrimination.

The court entered judgment on August 3, 2009. Alexander timely appealed.

STANDARD OF REVIEW

We review the trial court's ruling on a motion for summary judgment or summary adjudication de novo. (*Buss v. Superior Court* (1997) 16 Cal.4th 35, 60.) We review the court's rulings on evidentiary objections for abuse of discretion. (*DiCola v. White Bros. Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 679.)

DISCUSSION

I. Legal Framework

Biola's motion addressed Alexander's claims within the burden-shifting framework of *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 (hereafter *McDonnell Douglas*), which governs FEHA claims in which there is no direct evidence that the adverse employment action was taken with discriminatory intent. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354.) Under *McDonnell Douglas*, the plaintiff has the initial burden of producing evidence establishing a prima facie case of discrimination. If the plaintiff carries that burden, then the burden shifts to the defendant to produce evidence of legitimate, nondiscriminatory reasons for the adverse employment action at issue. If the defendant carries that burden, then the burden shifts back to the plaintiff to produce evidence that the defendant's proffered reasons are mere pretexts for discrimination. (*Guz v. Bechtel National, Inc.*, *supra*, 24 Cal.4th at pp. 354-356; see generally Chin et al., Cal. Practice Guide: Employment Litigation (The Rutter Group 2009) ¶ 7:390, p. 7-52.) To make an adequate showing of pretext, the plaintiff must

introduce “evidence supporting a rational inference that *intentional discrimination [on prohibited grounds] was the true cause* of the employer’s actions. [Citation.]” (*Guz v. Bechtel National, Inc.*, *supra*, 24 Cal.4th at p. 361.) Thus, if the employer introduces sufficient evidence of legitimate, nondiscriminatory reasons, the employee can defeat the employer’s summary judgment motion only if the evidence, considered as a whole, is sufficient “to permit a rational inference that the employer’s actual motive was discriminatory.” (*Ibid.*)

In support of its motion, Biola argued that (1) Alexander could not establish a *prima facie* case of discrimination or retaliation and (2) Biola had legitimate, nondiscriminatory reasons for terminating him. The trial court declined to address the first argument, concluding that the second, combined with Alexander’s failure to show pretext, was sufficient to warrant summary judgment for the defense. For the reasons discussed below, we agree.

II. Legitimate Nondiscriminatory Reason

Biola introduced evidence that it terminated Alexander because he had committed plagiarism in his academic writing, in violation of the academic honesty policy in Biola’s faculty handbook. Alexander presents two related arguments against the plagiarism charge: (1) He argues that the academic honesty policy in Biola’s faculty handbook acknowledges cross-cultural variation in the definition of plagiarism, and (2) he argues that he used the citation style that he was taught in India, according to which it is sufficient to list the sources in the bibliography, and quotation marks and in-text citation of sources is not necessary. We are not persuaded.

Biola’s faculty handbook provides the following definition of “plagiarism”: “Basically, plagiarism is claiming someone else’s ideas, words, or information as your own without acknowledgement or citation. . . . In the most serious cases, plagiarism reproduces a significant fraction of an entire work written by someone else.” The faculty handbook further provides that to avoid plagiarism “[y]ou must put others’ words in

quotation marks and cite your source(s) and must also give citations when using others' ideas, even if those ideas are paraphrased in your own words.”

The evidence shows that in some of Alexander's published work, page after page of text is identical, verbatim, to prior work by other authors, but Alexander failed to include quotation marks, footnotes, or any other indication that the words were not his own. Thus, the evidence unequivocally demonstrates that Alexander failed to do what the faculty handbook requires to avoid plagiarism, and that he committed plagiarism within the faculty handbook's definition.

Alexander argues to the contrary on the basis of the following paragraph from the faculty handbook, which we quote in full: “Plagiarism is an especially challenging issue for international students and non-native speakers of English because definitions of acceptable and unacceptable behavior may vary from culture to culture. Culture ‘A’ may say that copying another's work is ‘acknowledging the superior mastery and expression of an expert,’ while Culture ‘B’ may say that the same behavior is ‘plagiarism.’ This Faculty Handbook section describes the expectations of the U.S. academic community regarding plagiarism.”¹

The paragraph Alexander relies on does not support his position. The paragraph acknowledges that different cultures can have different standards for plagiarism, but the final sentence of the paragraph clarifies that the standards of the “U.S. academic community,” applicable to Biola students and faculty, are the standards articulated in the faculty handbook. No reasonable reader of the paragraph would take it to mean that Biola's students and faculty who came from other cultures that had other standards for plagiarism could follow their own cultures' standards without incurring liability for plagiarism at Biola.

¹ Read in isolation, this paragraph (like others in the academic honesty policy) might appear to apply only to students, but that appearance is dispelled by a separate provision of the academic honesty policy, which provides that “[a]ll of the same standards and expectations for student compliance with issues of plagiarism and academic honesty will be demanded of all faculty members in the university.”

Moreover, Alexander's claim that he followed the citation style he was taught in India conflicts with his own published writings. According to Alexander, he was taught that all he needed to do was list all of his sources in the bibliography, rather than use quotation marks and footnotes or other in-text citations. But in one of the works at issue, he actually does use indented block-quotations and in-text citations at various points. Alexander never explains why in some instances he attributes quoted material to the original author in the text (rather than merely in the bibliography) while in other instances he copies multiple pages of other authors' work without any attribution in the text. Given that Alexander's work does contain some use of indented block-quotations and in-text citation of sources, it unambiguously represents to the reader that the surrounding text is Alexander's own work. Because that surrounding text consists of verbatim quotations from other authors, Alexander committed plagiarism under the definition in Biola's faculty handbook.

We conclude that Biola carried its burden of producing evidence of a legitimate, nondiscriminatory reason for Alexander's termination.

III. Pretext

Having failed to rebut Biola's legitimate, nondiscriminatory reasons for firing him, Alexander attempts to show that the reasons are mere pretexts for discrimination, mainly by relying on evidence that Biola is an overwhelmingly Caucasian institution with a pervasive atmosphere of racial intolerance. The trial court sustained Biola's objections to significant portions of Alexander's evidence on this issue, and Alexander argues that in doing so the trial court abused its discretion.

We agree with the trial court that Alexander did not make an adequate showing of pretext. For the most part, we find it unnecessary to address the court's evidentiary rulings, because even if Alexander's evidence had been admitted it would have been insufficient. Consequently, in the following discussion we generally consider all of the evidence on which Alexander relies, regardless of whether the trial court excluded it.

We begin by reiterating that the evidence establishes that Alexander committed extensive acts of plagiarism within the meaning of Biola's academic honesty policy. Alexander does not argue that other Biola faculty members have been found guilty of plagiarism but were treated more leniently than he was. On the contrary, Alexander admits that in his 16 years at Biola he never heard of another faculty member being accused of plagiarism. Given the obvious strength of Biola's proffered reasons for terminating Alexander, he bears a heavy burden of introducing evidence sufficient to permit a rational inference that Biola's actual motive for firing him was discriminatory. (*Guz v. Bechtel National, Inc.*, *supra*, 24 Cal.4th at pp. 361-362.) We conclude that he has not carried that burden.

First, Alexander argues that although he had submitted the plagiarized writings in connection with previous applications for promotions, no one had raised any concerns about his "citation style" until he applied for promotion to full professor. He also states that Pennoyer had read one of the plagiarized books "and reviewed it positively, without finding any fault in the citation style used in that work." Neither of those points has any tendency to show pretext because Alexander admits that he has no reason to believe that Pennoyer or the other Biola personnel who reviewed his previous applications were previously aware of the plagiarism. For identical reasons, Alexander's claims that he "spent sixteen years on Biola's faculty without a blemish on his record" and "received positive reviews from students and superiors" cast no doubt on the credibility of Biola's reasons for firing him, because Biola was not yet aware of Alexander's plagiarism. Alexander also points out that Biola never provided him or other faculty "with any type of training or seminar regarding the [a]cademic [h]onesty [p]olicy," but that too has no tendency to show that Biola's reasons for terminating Alexander were pretextual. In addition, Alexander admits that he received the faculty handbook, which contains the academic honesty policy, when he was hired in 1994.

Second, Alexander describes various ways in which, he claims, he was subjected to unfavorable working conditions at Biola: In his declaration he states that in 2002, he

was moved from one school within Biola to another, was given an “increased clerical workload,” was “assigned to teach a lower academic program and a less prestigious set of classes,” was moved to a smaller and less desirable office, and was prohibited from serving on dissertation committees. That does not constitute sufficient evidence that Biola’s proffered reasons for terminating Alexander in 2006 were pretextual. All of those incidents occurred in 2002, just one year after Biola had materially *improved* Alexander’s working conditions by promoting him to “Associate Professor III” and giving him tenure. In addition, Alexander’s own evidence contradicts the statements in his declaration. For example, Alexander states that although “students continued to request” that he serve on their dissertation committees, Pennoyer “refused these requests without even consulting [Alexander].” (Alexander points to no evidence that non-Indian faculty were treated differently.) As an example, Alexander cites the case of an Indian doctoral student, and Alexander attaches, as an exhibit to his declaration, a copy of the letter from Pennoyer responding to the student’s request concerning Alexander’s service on the student’s committee. Contrary to Alexander’s declaration, however, the letter does not state that Alexander cannot serve on the student’s dissertation committee. Rather, the letter states that Pennoyer determined that Alexander could not serve *as chair* of the student’s dissertation committee because Alexander’s teaching and administrative duties were too burdensome to allow it, but if the student still wanted Alexander to be *a member* of the committee, the student should so inform Pennoyer, who was “willing to appoint [Alexander] to this task.” Thus, not only does the letter state legitimate, nondiscriminatory reasons for refusing to allow Alexander to *chair* the committee, it also contradicts Alexander’s claim that he was prohibited from *serving* on dissertation committees at all.²

² Alexander also argues that when he was moved to a different school within Biola his previous position was filled by a Caucasian faculty member, and when he was terminated he was again replaced by a Caucasian. But without information about the demographic makeup of the pool of candidates qualified to replace Alexander in each instance, neither of those facts is sufficient to justify a rational inference that

Third, Alexander argues that his unfavorable working conditions are given “particular poignance” by other “evidence of the discriminatory atmosphere at Biola.” In particular, in his declaration he referred to a study conducted by a Biola professor concerning diversity at the university. Attached as an exhibit to the declaration, however, are only pages 2, 17, 40, 42, 44, and 45 of the study, so it is impossible to get a sense of its overall conclusions. And even the pages that Alexander provided contradict his suggestion that the “dearth of minority faculty” at Biola is evidence of a “discriminatory atmosphere.” The report states that “[w]hen faculty, staff and administrators were posed the question of how can Biola hire and retain qualified faculty of color, the reasons most often given [for the relatively small number of minority faculty] were competition with other schools, the costs associated with hiring and relocating faculty, and a small candidate pool that meets our academic and spiritual requirements.” Alexander presents no evidence concerning the demographic makeup of that “small candidate pool.”

Alexander’s declaration also states that “there were . . . racist slurs made” at faculty meetings. The declaration does not, however, indicate how often the slurs were made, what they were, or who made them. Such vague references to “racist slurs” are insufficient to justify a rational inference that the particular decision makers who fired Alexander acted with discriminatory animus.³ Apart from the vague reference to “racist slurs,” Alexander describes only two specific instances of such conduct. One of the incidents occurred in 1997, before Alexander was repeatedly promoted and ultimately tenured before finally being terminated in 2006; the other was highly ambiguous (it involved a joke that, though apparently based on a racial stereotype, may have been

Alexander was fired because of his race rather than because of his plagiarism. Alexander admits he does not know who applied to fill his position after he was fired, does not know the demographic makeup of the applicant pool for employment at Biola, and is not aware of any qualified applicant to Biola who was denied employment based on race.

³ Indeed, Alexander never specifically identifies all of the individuals involved in the decision. In his declaration, he states, “It was my understanding that there was a second committee put together by Dean Pennoyer to investigate the charges of alleged plagiarism, and that he was in charge of the committee.” Alexander says nothing more about the members of this investigatory committee or about his efforts (if any), either during or before this litigation, to find out who they were.

meant as a flattering assessment of the intellectual abilities of Koreans). Taken separately or together, those incidents are not sufficient to justify a rational inference that Alexander was terminated because of his race rather than because of his plagiarism.

Fourth and finally, Alexander relies on various statements in his declaration concerning his subjective impressions of how he was treated at Biola. For example, Alexander's declaration states: "I feel I was treated differently because of my ethnic background. I felt I was treated as a second class citizen and a token minority. I felt isolated, ignored and marginalized." He also states that the discriminatory atmosphere was "manifested" by faculty members "ignoring me and giving me the cold shoulder." The trial court excluded much of this evidence, but even if it should have been admitted, the error was not prejudicial. Alexander's subjective impressions of being "marginalized," given "the cold shoulder," and so forth cannot justify a rational inference that he was terminated because of his race rather than because of his plagiarism.

For similar reasons, we conclude that Alexander has not introduced sufficient evidence of pretext to defeat Biola's motion with respect to the retaliation claim. Apart from his arguments concerning the plagiarism charges and the discriminatory atmosphere at Biola (which we have rejected), the only support Alexander cites for his retaliation claim is the circumstance that he was fired just eight months after having complained to Pennoyer about the allegedly discriminatory treatment of the Indian graduate student who was forced to retake his comprehensive exams.⁴ Given the strength of Biola's legitimate, nondiscriminatory reasons for firing Alexander, the timing of the decision is not, by itself, sufficient to justify a rational inference that he was terminated in retaliation for the complaint rather than on the basis of his plagiarism. (*Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 357 ["temporal proximity by itself, while sufficient to establish a prima facie case, is not adequate to show pretext"].)

⁴ Alexander says he was fired "within six months" after he complained about the treatment of the graduate student, but his own declaration indicates it was eight months. He complained in March and was fired in November.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs of appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

JOHNSON, J.